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Supreme Court, U.S.
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No. 95-68

In The

Supreme Court of the United States

October Term, 1995

MARY CATHERINE BORELLI McNEIL; et al.,

Petitioners,

v.

OKLAHOMA CITY URBAN RENEWAL AUTHORITY, a public body corporate; et al.,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of The State Of Oklahoma

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Respondents reject the Petitioners' characterization of the questions presented. The following question regarding jurisdiction should be initially considered:

1) Whether the Petitioners have presented any constitutional or federal question or other basis upon which this Court should accept a petition for writ of certiorari?

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 2

STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 3

ARGUMENT 7

Proposition I
Petitioners Have Not Been Deprived Of A Hearing 7

Proposition II
Petitioners Have Not Been Deprived Of The Commissioners' Award 11

Proposition III
The Decisions Below Do Not Confer Immunity Upon Respondents 13

CONCLUSION 13

TABLE OF AUTHORITIES

Page

CASES

Ames v. Wybrandt, 220 P.2d 693 (Okla. 1950).....4, 12

Cities Service Co. v. Huebner, 197 P.2d 985 (Okla. 1948)..... 10

Delhi Gas Pipeline Corp. v. Swanson, 520 P.2d 670 (Okla. 1974)..... 8, 9, 11

Graham v. City of Duncan, 354 P.2d 458 (Okla. 1960) 10, 13

Oklahoma City Urban Renewal Authority v. Borelli, CJ-90-624..... 1

Oklahoma City Urban Renewal Authority v. Borelli, 848 P.2d 33 (Okl.App. 1992) 2, 6

State of Oklahoma v. Adams, 105 P.2d 416 (Okla. 1940)..... 10

Wrightsman v. Southwestern Natural Gas Co., 46 P.2d 925 (Okla. 1935) 10, 12

Young v. Seaway Pipeline, Inc., 576 P.2d 1148 (Okla. 1977).....8, 11

FEDERAL

U.S. CONSTITUTION

14th Amendment 7

STATUTES

28 U.S.C. § 1257..... 2

RULES OF THE U.S. SUPREME COURT

Rule 13.1..... 2

STATE

STATUTES

66 Okla. Stat. § 53(C).....2, 12

66 Okla. Stat. § 54.....3, 4, 12

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OKLAHOMA CITY URBAN RENEWAL AUTHORITY, a public body corporate; et al.,

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On Petition For Writ Of Certiorari
To The Supreme Court Of The State Of Oklahoma

BRIEF IN OPPOSITION

OPINIONS AND JUDGMENTS DELIVERED IN STATE COURTS BELOW

Three of the opinions relevant to this case are reprinted in the Appendix to the Petition for Certiorari at A1, B1-B4 and C1-C2. A further judgment, mentioned but not reprinted by the Petitioner, is the agreed Order Denying Injunctive Relief entered by the District Court of Oklahoma County denying Petitioner's request for injunctive relief in the condemnation action which gave rise to the acts complained of herein by Petitioner and to which Petitioner must look for resolution of those complaints – *Oklahoma City Urban Renewal Authority v. Borelli,* CJ-90-624. A copy of that agreed order is reprinted as

Appendix A1-A5 to this Brief of Respondents in Opposition to the Petition for Writ of Certiorari. Also reprinted, as Appendix B1-B4 to this Brief of Respondents, is the decision of the Court of Appeals of the State of Oklahoma, Division No. 1, affirming the denial of injunctive relief by agreed order and denying Petitioners' attempted appeal therefrom. *Oklahoma City Urban Renewal Authority v. Borelli,* 848 P.2d 33 (Okl.App. 1992).

JURISDICTION

Petitioners have failed to establish a jurisdictional basis for review by this Court under 28 U.S.C. § 1257 or Rule 13.1 of the Rules of the Supreme Court. The facts and circumstances of this case simply do not present constitutional or federal question issues requiring resolution. The last decision in this case was rendered by the Oklahoma Supreme Court.

STATUTORY PROVISIONS

In addition to the statutory provisions set forth by Petitioners in their brief, Respondents note the following:

Title 66, Okl. Stat. § 53(C) provides, in pertinent part:

> [I]f said [condemnor] shall, at any time before it enters upon said real property . . . , pay to said clerk [of the court] for the use of the owner the sum so assessed and reported to him as aforesaid [by the report of commissioners appointed by the court], it shall be authorized to

construct and maintain its [improvements] over and across said premises.

Title 66, Okla. Stat. § 54 provides:

> When possession is taken of property condemned, as provided herein, the owner shall be entitled to the immediate receipt of the compensation awarded, without prejudice to the right of either party to prosecute further proceedings for the judicial determination of the sufficiency or insufficiency of said compensation.[1]

STATEMENT OF THE CASE

The facts relevant to this Court's consideration of the Petition for Writ of Certiorari are these. The Oklahoma City Urban Renewal Authority ("OCURA") filed condemnation proceedings to acquire property belonging to Petitioners on January 23, 1990. The Report of the court-appointed commissioners, setting the value of the property, was filed on May 14, 1990, and on the same day, OCURA deposited the amount of the award with the court clerk's office, from which it could be withdrawn by Petitioners at any time.[2]

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[1] This statute is interpreted to mean that withdrawal of the commissioners' award by the condemnee serves to waive exceptions to the report of commissioners, if still pending, but does not waive a pending demand for jury trial (by which the sufficiency of damages is reviewed).

[2] While it may be true that, under Oklahoma law, a condemnee waives adjudication of any pending exceptions to the report of commissioners *if* the condemnee withdraws the funds *prior* to a hearing on the exceptions, this is the choice of the

Within the statutorily prescribed time, Petitioners filed exceptions to the report of commissioners, challenging OCURA's right to take, and a demand for jury trial to appeal the amount of damages awarded.[3]

OCURA took possession of the condemned property and, on September 19, 1990, the Board of Commissioners of OCURA approved a contract with Midwest Wrecking Co. ("Midwest") to clear the property of its improvements – the asphalt parking lot surface. Thereafter, Midwest cleared the lot and, on October 17, 1990 – *after* the demolition was completed – Petitioners filed in the condemnation proceedings an "Application for a Court Order to Stop [OCURA's] Trespass and Maintain the Status Quo **Until** the Due Process Violations Exceptions and Objections Are Resolved and/or Dismissal of this Cause" (emphasis added). This was a request for a temporary injunction, until the issues specified could be resolved.[4]

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condemnee. There is nothing to prevent the condemnee from proceeding with judicial adjudication of pending exceptions and *then* withdrawing the funds if the condemnor's right to take is upheld. See 66 Okla. Stat. § 54. Petitioners' suggestion that OCURA and/or its Commissioners "denied the Petitioners possession rights to *both* the "property" and the "award" by an illegal attempt to force the "award" upon the Petitioners" (at p. 15 of their brief herein) is a gross distortion of both the facts and the law in this case, and is completely unsupported by any possible interpretation of either.

[3] Jury trial of the sufficiency of the damages set by the appraisement of the court-appointed commissioners is considered an appeal from the report of commissioners.

[4] This is precisely the type of opportunity which the Oklahoma Supreme Court indicated would be available in a proper case in its opinion in *Ames v. Wybrandt*, 220 P.2d 693 (Okla. 1950), as discussed below.

On January 3, 1991, an agreed Order Denying Injunctive Relief was entered solely by approval and agreement of the parties, without hearing or determination by the court, as was confirmed by the Oklahoma Court of Appeals, Division No. 2. (See Appendix B1-B4 hereto.) That agreed Order, reprinted as Appendix A1-A5 to this brief, included the following findings:

> THE COURT FURTHER FINDS that on May 14, 1990, the Plaintiff obtained title to the property involved in this case when it tendered to the Court Clerk money in the amount of the Commissioners' Award set in this case, plus Commissioners' Fees and poundage.
>
> THE COURT FURTHER FINDS that the Plaintiff took possession and custody of the property involved in this case shortly after title passed to the Plaintiff on May 14, 1990.
>
> THE COURT FURTHER FINDS that the Court's denial of injunctive relief should not and is not a ruling upon the merits of the Landowners' Exceptions or objections to the Plaintiff's right to take or to the "Report of Commissioners" and the same are preserved for subsequent adjudication.

The agreed Order:

> . . . ORDERED, ADJUDGED AND DECREED that the Landowners' prayer for relief by way of their Application (whether the same be considered an injunction, temporary injunction, restraining order, temporary restraining order or stay) to prevent Plaintiff from proceeding with the clearing and removal of improvements from the Landowners' "parking lot" property condemned in this case is hereby denied.

> . . . FURTHER ORDERED, ADJUDGED AND DECREED that this ruling does not reach the merits of the Landowners' Exceptions or objections to the "Report of Commissioners" or the Plaintiff's right to take in this case and the same are preserved for subsequent adjudication.[5]

The agreed Order Denying Injunctive Relief was upheld by the Oklahoma Court of Appeals, Division No. 2. *Oklahoma City Urban Renewal Authority v. Borelli*, 848 P.2d 33 (Okl.App. 1992), reprinted here as Appendix B1-B4. The Oklahoma Supreme Court declined to review this decision, denying Petitioners' request for a writ of certiorari.

After the decision of the Court of Appeals and prior to the denial of the writ of certiorari, Petitioners filed this action challenging the condemnation action, couched as an action in trespass and deprivation of constitutional and civil rights. (District Court of Oklahoma County, CJ-92-7943-67.)

The district court sustained Respondents' Motion to Dismiss. Appendix C1-C2 to Petitioners' brief herein.

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[5] Petitioners' claim, at page 14 of their brief herein, that "[t]he postdeprivation remedy Ordered by the Oklahoma court in our case at argument is to return to the eminent domain case and collect your market value damages you were going to recover in the first place" is categorically wrong. Petitioners were not deprived of a "postdeprivation remedy", but rather, entered into an agreed Order Denying Injunctive Relief which specifically orders preservation of the questions raised by Petitioners' Exceptions to the Report of Commissioners in the condemnation action (OCURA's right to take Petitioners' property) and, by extension, the issues raised by Petitioners in this action, as well.

Petitioners appealed that decision, which was upheld by the Oklahoma Court of Appeals. See Appendix B1-B4 to Petitioners' brief herein. The Oklahoma Supreme Court denied Petitioners' request for a writ of certiorari. See Appendix A1 to Petitioners' brief herein. Petitioners next filed their Petition for Writ of Certiorari herein.

ARGUMENT

THE COURT SHOULD DENY THE PETITION AS THERE IS NO BASIS FOR REVIEW BY THIS COURT

- Petitioners were not denied possession of the commissioners award.
- The decisions of the Oklahoma courts do not confer "absolute immunity" on Respondents.
- Petitioners have not been denied either a pre- or post-deprivation hearing.

Proposition I

Petitioners Have Not Been Deprived Of A Hearing

The determination of the Petition for Writ of Certiorari herein is fact dependent. As compelling as the "Questions Presented" stated by Petitioners may (or may not) be, they simply have no application to this case.

Petitioners ask whether denial of a predeprivation hearing and possession of their land for two years (and continuing), is a violation of the due process clause of the Fourteenth Amendment. In point of fact, Petitioners have not been denied a predeprivation hearing in violation of the Fourteenth Amendment.

If Petitioners were entitled to a *pre*deprivation hearing, they voluntarily relinquished or waived that right when they entered into the agreed Order Denying Injunctive Relief. Therefore, Petitioners' claims of constitutional deprivation are hollow and misleading.

Under the law of Oklahoma, the exercise of the power of eminent domain, allegations as to trespass and damages related thereto, may not be collaterally pursued in a separate proceeding where, as here, a condemnation action is pending. *Young v. Seaway Pipeline, Inc.*, 576 P.2d 1148 (Okla. 1977). This Petition for Writ of Certiorari arises from the dismissal by the district court of Petitioners' cause of action attempting to separately and collaterally challenge a pending condemnation action.

The claims of Petitioners (condemnees) must be resolved within and as a part of the condemnation action. *Young v. Seaway Pipeline, Inc., supra,* and *Delhi Gas Pipeline Corp. v. Swanson,* 520 P.2d 670 (Okla. 1974).

In *Seaway,* the landowner filed suit against the pipeline company after condemnation procedures had been instituted by Seaway to secure a pipeline right-of-way across the landowner's property. The landowner alleged antitrust violations and trespass.

The trial court sustained Seaway's demurrers to the petition and refused to permit the landowner to amend on the grounds that the petition was not amendable to any amendment which would state a cause of action. On appeal, this decision was affirmed.

The Oklahoma Supreme Court found it unnecessary to address the antitrust allegations. Because there was a

pending condemnation action, the Court found that the landowner was not entitled to collaterally challenge in a separate proceeding the authority of the pipeline company to exercise the power of eminent domain, and that any damage for trespass was part of the condemnation proceeding.

In *Delhi Gas Pipeline Corp. v. Swanson, supra,* the Oklahoma Supreme Court assumed original jurisdiction and granted a writ of prohibition to prevent the trial court from proceeding with landowners' action to recover damages in a trespass action.

The pipeline company had entered onto the landowners' property to begin construction during negotiations with the landowners. When no agreement could be reached, Delhi instituted condemnation proceedings.

The report of commissioners was confirmed by the trial court, finding that Delhi had the right to exercise the power of eminent domain and that the taking was necessary. Exceptions to the report of commissioners were overruled.

The landowners then filed suit against Delhi and its contractor alleging trespass. Delhi filed a motion to dismiss, which was overruled. Delhi then applied to the Oklahoma Supreme Court to assume original jurisdiction and issue a writ of prohibition.

The landowners contended they were entitled to maintain the trespass action because Delhi had taken an amount of land in excess of that reasonably necessary for its purposes.

The Court emphasized that all damage in the case occurred prior to the time the trial court entered the order confirming the report of commissioners. The Court also reiterated that questions concerning the right to condemn must be resolved in the condemnation action by exceptions to the report of commissioners, citing *Wrightsman v. Southwestern Natural Gas Co.*, 46 P.2d 925 (Okla. 1935).

The Court reaffirmed prior decisions holding that where the damage had occurred prior to trial in the condemnation proceeding, the condemnee could recover in the condemnation proceeding for all of his damages, irrespective of negligence, *citing Cities Service Co. v. Huebner,* 197 P.2d 985 (Okla. 1948). *Graham v. City of Duncan,* 354 P.2d 458 (Okla. 1960) was also cited, holding:

> [T]hat the owner must recover in one action all damages which have resulted, or are reasonably likely to result from a proper construction or operation of the improvement, and **no subsequent action will lie** to recover for items which might have been considered in the original proceeding.

quoting State of Oklahoma v. Adams 105 P.2d 416 (Okla. 1940) (*emphasis added*).

The action underlying this Petition for Writ of Certiorari sounds in tort, primarily trespass. Despite Petitioners' unsupported allegations of *ultra vires* action,[6] and

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[6] Although Petitioners named as defendants in this action – both individually and in their official capacity – the three members of the Board of Commissioners of OCURA who voted to approve the contract to demolish the improvements on the condemned property (as well as the demolition contractor), no

claims of constitutional violation, it is still nothing more than a challenge to the necessity of the condemnation and OCURA's authority to condemn Petitioners' land.

These matters must be resolved in the pending condemnation action under the holdings in *Seaway* and *Delhi, supra,* and Petitioners have the opportunity to do so by virtue of their pending exceptions to the report of commissioners and the provisions of the agreed Order Denying Injunctive Relief expressly preserving these issues for determination. Petitioners have not been denied a hearing but, rather, **agreed** to preserve these issues until the hearing on their exceptions to the report of commissioners.

Proposition II

Petitioners Have Not Been Deprived Of The Commissioners' Award

It simply is not true that Petitioners have been deprived of the possession of both their property and the commissioners' award in the condemnation action by OCURA and/or the members of its Board of Commissioners named as defendants in this action (Respondents). Petitioners remain free at any time to withdraw the commissioners' award from the court. If Petitioners did not want to risk foreclosure of the determination of their exceptions to the report of commissioners, they could have at any time, and may even now, seek to have their exceptions set down for hearing. Instead, Petitioners have pursued injunctive relief and appeal from the

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indication of any action or motive outside the normal course of OCURA's procedure has been given.

agreed Order denying that relief, as well as this separate proceeding collaterally attacking the right to take and the procedures followed by Respondents in the condemnation proceedings.

Petitioners claim the burden is on Respondents (condemnor) to seek hearing on Petitioners' exceptions, but this claim is unsupported by authority and is contrary to Oklahoma statutes. 66 Okla. Stat. §§ 53(C), 54.

Petitioners' citation to, and quote from, *Ames v. Wybrandt*, 220 P.2d 693 (Okla. 1950), is not entirely clear. *Ames* challenged the constitutionality of Oklahoma's condemnation procedure, claiming it denied condemnees of their property without due process because it seemed to permit the condemnor to take possession *without any opportunity* for the condemnee to first obtain a hearing on the right to take, as raised by exceptions to the report of commissioners. This, the Court said, would be unconstitutional. The Oklahoma Supreme Court stated in *Ames*:

> [W]e deem it well to say that the District Court after objection to the Commissioners' report or the trial judge prior thereto in a proper case and upon proper application and showing . . . could make an order restraining the condemnor from taking possession of the land pending final determination of the right to condemn.

220 P.2d at 696, citing *Wrightsman v. Southwestern Natural Gas Co.*, 46 P.2d 925 (Okla. 1935) (emphasis added).

Ames does not assign responsibility for obtaining such an order, or for setting the hearing on the exceptions, but logic would dictate that such responsibility would fall to the party wanting such hearing. In fact,

Petitioners did seek injunctive relief in the condemnation action at issue here, but Petitioners entered into an agreed Order Denying that Injunctive Relief and cannot now complain they were denied the opportunity for a hearing.

Proposition III

The Decisions Below Do Not Confer Immunity Upon Respondents

Petitioners' claim that the decisions of the district court and the court of appeals below somehow confer "absolute immunity" upon Respondents, because not all Respondents are parties to the underlying condemnation action, is incomprehensible. While Respondents agree that the issues raised by Petitioners must be resolved in the still-pending condemnation action, Petitioners have made no attempt to bring the additional Respondents into the condemnation action as parties in order to assert these claims against them. The holding in *Graham v. City of Duncan, supra,* would indicate that this is not only possible, but is required.

CONCLUSION

Petitioners have not established a jurisdictional basis for this Petition for Writ of Certiorari. There simply are no constitutional or federal question issues requiring resolution in this case. The Questions Presented, as framed by Petitioners, are not applicable to the facts here. In view of the foregoing, Respondents respectfully request

that this Court deny Petitioners' Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

OKLAHOMA CITY URBAN RENEWAL AUTHORITY, a Public Body Corporate	)	
Plaintiff,	)	No. CJ-90-624
vs.	)	(Filed
MARGARET R. BORELLI and JOHN W. BORELLI, wife and husband; MARGARET ANNA BORELLI FENT and JERRY R. FENT, wife and husband; JOHN W. BORELLI, JR. and MARIANNE DULLE BORELLI, husband and wife; MARY CATHERINE BORELLI McNEIL and EDD R. McNEIL, wife and husband; ELIZABETH ANN FENT BORDERS and RICHARD CHRISTOPHER BORDERS, wife and husband; DAVID JAROME FENT; MARGARET MARY FENT; ELEANOR MARY BORELLI, a Minor; STEVEN THOMAS BORELLI, a Minor; MARGUERITE CLAIRE BORELLI, a Minor; JENIFER NICOLE McNEIL, a Minor; SARAH FAITH McNEIL, a Minor; JOE B. BARNES, County Treasurer of Oklahoma Oklahoma County; and BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA COUNTY,	)	Jan. 3, 1991)
Defendants.	)	

ORDER DENYING INJUNCTIVE RELIEF

Now on this date there comes on for hearing the Application for relief filed by the Defendants, MARGARET R. BORELLI and JOHN W. BORELLI, wife and husband; MARGARET ANNA BORELLI FENT and JERRY R. FENT, wife and husband; JOHN W. BORELLI, JR. and MARIANNE DULLE BORELLI, husband and wife; MARY CATHERINE BORELLI McNEIL and EDD R. McNEIL, wife and husband; ELIZABETH ANN FENT BORDERS and RICHARD CHRISTOPHER BORDERS, wife and husband; DAVID JAROME FENT; MARGARET MARY FENT; ELEANOR MARY BORELLI, a Minor; STEVEN THOMAS BORELLI, a Minor; MARGUERITE CLAIRE BORELLI, a Minor; JENIFER NICOLE McNEIL, a Minor; SARAH FAITH McNEIL, a Minor; with said minor Defendants being represented by their Guardian Ad Litem Defendants as per the prior Order of the Court, and all said Defendants being hereinafter called "the Landowners".

Present are Edd R. McNeil, Attorney for the Landowners, and James Dan Batchelor, attorney for the Plaintiff, OKLAHOMA CITY URBAN RENEWAL AUTHORITY. After being fully informed in the premises, the Court makes the following findings of fact and conclusions of law.

THE COURT FINDS that on the 17th day of October, 1990, the Landowners filed with the Court Clerk a pleading captioned:

> DEFENDANT'S APPLICATION FOR A COURT ORDER TO STOP THE PLAINTIFF'S TRESPASS AND MAINTAIN THE STATUS QUO UNTIL THE DUE PROCESS VIOLATIONS, EXCEPTIONS AND OBJECTIONS ARE RESOLVED

AND/OR DISMISSAL OF THIS CAUSE (WITH BRIEF INCLUDED)

THE COURT FINDS that it is clear that the Landowners seek injunctive relief to prevent the Plaintiff from proceeding with the clearing and removal of improvements from the Landowners' "parking lot" property condemned in this case until such time as the Court has considered and ruled upon the Defendants' Exceptions to the "Report of Commissioners" which includes numerous objections to the Plaintiff's right to condemn in this case.

THE COURT FURTHER FINDS that on May 14, 1990, the Plaintiff obtained title to the property involved in this case when it tendered to the Court Clerk money in the amount of the Commissioners' Award set in this case, plus Commissioners' Fees and poundage.

THE COURT FURTHER FINDS that the Plaintiff took possession and custody of the property involved in this case shortly after title passed to the Plaintiff on May 14, 1990.

THE COURT FURTHER FINDS that the Landowners filed their Exceptions to the "Report of the Commissioners" on May 29, 1990, within the time required by law and said Exceptions are still pending before the Court.

THE COURT FURTHER FINDS that the Plaintiff has completed its demolition of the improvements on the Landowners' property.

THE COURT FURTHER FINDS after considering the arguments of counsel and the authorities of law that the Landowners' Application for Relief (whether the same be characterized as an injunction, temporary injunction,

restraining order, temporary restraining order or stay) is not warranted by the facts in this case and, therefore, the same should be denied.

THE COURT FURTHER FINDS that the Court's denial of injunctive relief should not and is not a ruling upon the merits of the Landowners' Exceptions and objections to the Plaintiff's right to take or to the "Report of Commissioners" and the same are preserved for subsequent adjudication.

THE COURT FURTHER FINDS that it recently considered a similar matter arising out of the same Urban Renewal project in the case of *OKLAHOMA CITY URBAN RENEWAL AUTHORITY, a Public Body Corporate, Plaintiff vs. A. E. HIGGANBOTHAM, et al, Defendants;* Oklahoma County District Court Case No. CJ-89-9251.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Landowners' prayer for relief by way of their Application (whether the same be considered an injunction, temporary injunction, restraining order, temporary restraining order or stay) to prevent Plaintiff from proceeding with the clearing and removal of improvements from the Landowners' "parking lot" property condemned in this case is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this ruling does not reach the merits of the landowners' Exceptions or objections to the "Report of Commissioners" or the Plaintiff's right to take in this case and the same are preserved for subsequent adjudication.

DATED this 3 day of January, 1991.

/s/ Leamon Freeman
JUDGE OF THE
DISTRICT COURT

I, TOM PETUSKEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerk's Office of Oklahoma County, Oklahoma this 9 day of January, 1991.

TOM PETUSKEY, Court Clerk
By /s/ Bertha Chamberlain, Deputy

APPROVED:

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Defendant Landowners

APPENDIX B

OKLAHOMA CITY URBAN RENEWAL AUTHORITY, a Public Body Corporate, Appellee,

v.

Margaret R. BORELLI and John W. Borelli, wife and husband; Margaret Anna Borelli Fent and Jerry R. Fent, wife and husband; John W. Borelli, Jr. and Marianne Dulle Borelli, husband and wife; Mary Catherine Borelli McNeil and Edd R. McNeil, wife and husband; Elizabeth Ann Fent Borders and Richard Christopher Borders, wife and husband; David Jarome Fent; Margaret Mary Fent; Eleanor Mary Borelli, a minor; Steven Thomas Borelli, a minor; Marguerite Claire Borelli, a minor; Jennifer Nicole McNeil, a minor; Sarah Faith McNeil, a minor, Appellants.

No. 76895.

Released for Publication by Order of the Court of Appeals of Oklahoma, Division No. 1.

Court of Appeals of Oklahoma,
Division No. 1.

Aug. 25, 1992.

Certiorari Denied Feb. 9, 1993.

Appeal was taken from order of the District Court, Oklahoma County, Leamon Freeman, J., which denied request for injunction. The Court of Appeals, Bailey, J., held that appellants who had consented to order denying injunction could not appeal from the denial of relief.

Affirmed.

Appeal from the District Court of Oklahoma County; Leamon Freeman, Judge.

AFFIRMED.

Edd R. McNeil, Hurst & McNeil, Sulphur, for appellants.

Dan Batchelor, Barry W. Johnson, Batchelor and Johnson, P.C., Oklahoma City, for appellee.

BAILEY, Judge:

Appellants seek review of the Trial Court's order denying Appellants' application to enjoin Appellee Oklahoma City Urban Renewal Authority (OCURA) from demolition of improvements to and possession of certain real property sought to be condemned by OCURA. Herein, Appellants complain that, despite the consent nature of the order below denying injunctive relief, OCURA had no authority to continue possession of the subject property.

In January 1990, OCURA filed Petition to Select and Summon Commissioners to condemn certain real property (specifically, parking lots) owned by Appellants. The Commissioners filed their Report in May 1990, and OCURA paid into court the amount designated in the Report. Two weeks later, Appellants filed Exceptions to the Report of Commissioners, contesting OCURA's power to condemn the property.

Demolition of improvements on the property began October 1, 1990. On October 17, 1990, Appellants applied for injunctive relief, seeking to enjoin OCURA's actions until hearing on Appellants' Exceptions to the Report of Commissioners. Hearing thereon was twice continued

and subsequently stricken on December 7, 1990. On January 3, 1991, the parties submitted to the Trial Court for signature an agreed-to order, signed by respective counsel, denying Appellants the requested injunctive relief, but reserving Appellants' exceptions and objections to Report of Commissioners for subsequent adjudication.

The following day, Appellants filed their petition-in-error challenging this order. Thereafter, OCURA filed Motion to Clarify, Correct and Supplement the Record and Order Appealed From in the Supreme Court, which the Trial Court granted. Pursuant thereto, the Trial Court entered an order amending the record nunc pro tunc to reflect filing of the January 3, 1991 order "solely pursuant to approval and agreement of the parties" without hearing or determination by the Trial Court.

Appellants forward numerous challenges to OCURA's authority to condemn, obtain title to, demolish improvements on, and possess property prior to a hearing on the Appellants' objections thereto. However, we view the dispositive issue in this case as whether Appellants are entitled to appeal from an order to which Appellants consented and agreed. In that regard, although Appellants assert that by agreeing with and consenting to the order denying injunctive relief they were merely "agreeing to disagree," we find nothing in the record to support this contention. On the contrary, the order itself – and the subsequent order amending the first order *nunc pro tunc* – clearly reflects the intent of the parties to resolve the injunction issue by agreement and without hearing.

Where the record reflects entry of an adverse decision with the consent of the appealing party, such consent "ends all contention between the parties, and there is nothing to review on appeal."[1] In the instant case, the record reflects Appellants clearly consented to the specific language of the order denying injunctive relief. Under these circumstances, we hold Appellants may not now complain of the effect of that order denying Appellants the requested injunctive relief.

The order of the Trial Court is therefore AFFIRMED.

GARRETT, P.J., and ADAMS, J., concur.

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[1] *Napier v. Dilday*, 38 Okl. 365, 132 P. 1085 (1913). See also, *Ferrell v. State Department of Highways*, 387 P.2d 129 (Okl.1963) (party may not take inconsistent position on appeal or alleged error which party invited or acquiesced in at trial level); *Wray v. Ferris*, 184 Okl. 132, 85 P.2d 402 (1938) (A party who joins in a request for a particular order or judgment cannot appeal from such order).